

Case Law to Add to Our Briefs and Court Documents

CORPORATIONS

A CORPORATION CANNOT SUE, NOR OTHERWISE CONTEND WITH, A LIVING NATURAL MAN or WOMAN.

RUNDLE V. DELAWARE & RARITAN CANAL COMPANY, 55 U. S. 80 (1852)

(Thus Mr. Justice Blackstone, in the 18th chapter of his 1st volume, holds this language:

"We have hitherto considered persons in their natural capacities, and have treated of their rights and duties. But as all personal rights die with the person, and as the necessary forms of investing a series of individuals, one after another, with the same identical rights, would be inconvenient, if not impracticable, it has been found necessary, when it is for the advantage of the public to have any particular rights kept on foot and continued, to constitute artificial persons who maintain a perpetual succession and enjoy a kind of legal immortality. These artificial persons are called 'corporations.'" This same distinguished writer, in the first book of his Commentaries 123, says, "The rights of persons are such as concern and are annexed to the persons of men, and when the person to whom they are due is regarded, are called simply 'rights;' but when we consider the person from whom they are due, they are then denominated, 'duties.'" And again, cap. 10th of the same book, treating of the "people," he says, "The people are either 'aliens' -- that is, born out of the dominions or allegiance of the Crown -- or 'natives' -- that is, such as are born within it." Under our own systems of polity, the term "citizen," implying the same or similar relations to the government and to society which appertain to the term, "subject" in England, is familiar to all. Under either system, the term used is designed to apply to man in his individual character and to his natural capacities -- to a being or agent possessing social and political rights and sustaining social, political, and moral obligations. It is in this acceptation only, therefore, that the term "citizen," in the article of the Constitution, can be received and understood. When distributing the judicial power, that article extends it to controversies between "citizens" of different states. This must mean the natural physical beings composing those separate communities, and can by no violence of interpretation be made to signify artificial, incorporeal, theoretical, and invisible creations. A corporation, therefore, being not a natural person, but a mere creature of the mind, invisible and intangible, cannot be a citizen of a state, or of the United States, and cannot fall within the terms or the power of the above mentioned article, and can therefore neither plead nor be impleaded in the courts of the United States.

OFFICER or AGENCY

"Ignorance of the law does not excuse misconduct in anyone, least of all in a sworn officer of the law." *In re McCowan (1917), 177 C. 93, 170 P. 1100* "An officer who acts in violation of the Constitution ceases to represent the government." *Brookfield Co. v. Stuart* "The rule of governmental immunity as to all political subdivisions of government is hereby abrogated as it has heretofore been abrogated as to municipal corporations, ie., cities. No longer is the defense of governmental immunity for tort liability available, irrespective of whether the involved political subdivision is functioning 'governmentally' or 'proprietary'." *Myers v. Genessee County, 375 Mich 1, 1965.* The principal of sovereign immunity is not one which allows the sovereign to continue to inflict injury....(sovereign immunity) does not give the sovereign the right to totally disregard the effect of its' actions upon the public." *Shaw v. Salt Lake County, 224 P2d 1037* "Sovereign immunity does not apply where (as here) government is a lawbreaker or jurisdiction is the issue." *Arthur v. Fry 300 F Supp. 622 (1960).*

VOID JUDGEMENTS

"A void judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction over the subject matter or the parties." *Rook v. Rook*, 233 Va 92, 95, 353 SE2d 756, 758 (1987)
"A judgment obtained without jurisdiction over the defendant is void." *Overby v. Overby*, 457 S.W.2d 851 (Tenn. 1970). "(a) challenged judgment is either valid or void." *Boyer v. Boyer*, 1999 ME 128 paragraph 6, 736 A.2d 273, 275. "A judgment is void and must be vacated if the court issuing the judgment lacks subject matter jurisdiction." *Id.* Jurisdiction is of two kinds, of the subject matter and of the person, and both must concur or the judgment will be void in any case in which a court has assumed to act, the difference being that jurisdiction of the subject-matter given by law cannot be conferred by consent, while jurisdiction of the person may be obtained by consent. *Rabbit v. Frank c. Webber & Co.* 130 N.E. 787, 788in criminal cases we have repeatedly stated that the failure of an indictment to allege an element of the offense deprives the court of jurisdiction to proceed with the prosecution of the defendant. *See State v. Levasseur*, 538 A.2d 764, 766 (Me. 1988) One of the hallmarks of subject matter jurisdiction is that it can be raised at any time, including on appeal. If the District Court lacked subject matter jurisdiction, we would have to vacate its order.
Hawley v. Murphy, 1999 ME 127, 8, 736 A.2d 268, 271; M.R. Civ. P. 12 (h)(3)

JURISDICTION-"Subject matter jurisdiction may not be waived and courts may raise the issue sua sponte" FRCP, Rule 12(h) "Lack of subject matter jurisdiction is a defense that is never waived." FRCP, Rule 12(h) 3

"Therefore, it is necessary that the record present the fact establishing the jurisdiction of the tribunal." *Lowe v. Alexander* 15C 296; *People v. Board of Delegates of S.F. Fire Department.*, 14C 479 "The law requires PROOF OF JURISDICTION to appear on the Record of the administrative agency and all administrative proceedings." *Hagans v. Lavine*, 415 U.S. 533 (1974) "If any tribunal (court) finds absence of proof of jurisdiction over person and subject matter, the case must be dismissed." *Louisville RR v. Motley*, 211 U.S. 149, 29 S Ct. 42 (1908) "Where there is no jurisdiction there is no judge; the proceeding is as nothing. Such has been law from the days of the Marshalsea." 10 Coke 68; also *Bradley v. Fisher*, 13 Wall 335, 351. "*Manning v. Ketcham*, 58 F.2d 948. "A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter any authority exercised is a usurped authority and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible." *Bradley v. Fisher*, 13 Wall 335, 351, 352 Jurisdiction is the essential basis of the court's authority, and this issue may be raised at any time. *See State v. Dhuy*, 2003 ME 75 Paragraph 8, 825 A.2d 336, 341; M.R. Civ. P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.") "Subject matter jurisdiction cannot be waived by parties, conferred by consent, or ignored by court". *Babcock & Wilson v. Parsons Corp.*, 430 F.2d 531 (1970). "Subject matter jurisdiction can never be waived and can be raised at any time, even after trial". *Zenith Radio Corp. v. Matsushita Elec. Indus. CO., Ltd.*, 494 F. Sup. 1161 (D.C. Pa., 1980). "Lack of subject matter jurisdiction is not waivable and can even be raised on appeal after judgment on the merits". *Monaco v. Carey Canadian Mines, Ltd.*, 514 F. Suppl 357 (D.C., Pa., 1981) "Jurisdiction, once challenged, cannot be assumed and must be decided." *Maine v. Thiboutot* 100 S. Ct. 250.